

Customer No. 24498  
Serial No. 10/541,577  
Response to OA dated December 24, 2008

Docket No. PF030001

### REMARKS

This application has been reviewed in light of the Office Action dated December 24, 2008. Claims 1–25 are pending in the application. Claims 1 and 16–25 have been amended. New claims 26 and 27 have been added. No new matter has been introduced. Reconsideration of the rejection in light of the arguments and the amendments is respectfully requested.

In order to minimize confusion, the claims have been amended as per the amendment filed in response to the Final Office Action dated September 5, 2008 (vacated by the Examiner). These amendments make several clarifications throughout the claims, and also incorporate some features from claims 20 and 23 into claims 1 and 16. Claims 1 and 16 have been further amended to recite clarifying language regarding the characteristic parameters. Support for this language can be found in the present specification on page 6, lines 1–14.

New claim 26 finds support in the present specification in page 5, lines 26–29, and page 7, lines 14–21. New claim 27 finds support in the present specification in page 7, lines 4–12. The Examiner has not yet considered claims 26 and 27. Applicants believe that these new claims are patentable over the cited art.

Claims 20–25 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

The Examiner asserts that the subject matter of claims 20, 21, 23, and 24 which refers to moving audio tracks from a first cluster to a new cluster is not supported by the specification as filed. Claims 20, 21, 23, and 24 have been amended such that they no longer recite this language.

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It is therefore respectfully asserted that one having ordinary skill in the art would recognize that Inventors were in possession of the invention recited in claims 20-25 at the time of filing. Reconsideration of the rejection is earnestly solicited.

Claims 1, 2, 4-10, 12, 13, and 16-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,149,755 to Obrador (hereinafter "Obrador").

Claim 1 as amended recites, *inter alia*, "wherein said characteristic parameters comprise physical features, perceptual features, and psychological features, wherein physical features comprise one of more of spectral centroid, short-time energy, or short-time average zero-crossing, and wherein perceptual features comprise one or more of rhythm and tonality." Claim 16 recites analogous language. It is respectfully asserted that Obrador fails to disclose or suggest at least perceptual and psychological features.

For instance, Obrador says nothing regarding rhythm or tonality in the entire reference. Furthermore, Obrador fails entirely to take into account the psychological qualities of tracks discussed in the present specification at page 6, lines 12-23. These features represent qualities such as being "calm" or "energetic." These provide distinct and novel features for classifying audio tracks.

Claim 1 as amended further recites, "upon said determining, automatically creating a new, second cluster; assigning the new audio track to said new, second cluster; **classifying the audio tracks into the groups or clusters including the second cluster.**" It should be noted that none of the cited art shows classifying the audio tracks again after the creation of a second cluster. This language is supported by the specification at page 5, lines 26-29, page 6, lines 25-33, and page 7, lines 1-2.

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For at least these reasons, it is believed that claims 1 and 16 are in condition for allowance. Because claims 2, 4-10, 12, 13, and 17-19 depend from claims 1 and 16, and therefore include all of the elements of their parent claims, it is also believed that claims 2, 4-10, 12, 13, and 17-19 are in condition for allowance. Reconsideration of the rejection is earnestly solicited.

Claims 3 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Obrador in view of U.S. Patent No. 6,987,221 to Platt (hereinafter "Platt").

Claims 3 and 11 depend from claim 1 and therefore include all of the elements of their parent claim. Because Platt cannot cure the deficiencies of Obrador with respect to the characteristic parameters recited in claim 1, it is respectfully asserted that Obrador and/or Platt, taken alone or in any combination, fail to disclose or suggest all of the elements of claims 3 and 11. It is therefore believed that claims 3 and 11 are in condition for allowance. Reconsideration of the rejection is earnestly solicited.

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Obrador in view of U.S. Patent No. 7,043,477 to Mercer (hereinafter "Mercer").

Claims 14 and 15 depend from claim 1 and therefore include all of the elements of their parent claim. Because Mercer cannot cure the deficiencies of Obrador with respect to the characteristic parameters recited in claim 1, it is respectfully asserted that Obrador and/or Mercer, taken alone or in any combination, fail to disclose or suggest all of the elements of claims 14 and 15. It is therefore believed that claims 14 and 15 are in condition for allowance. Reconsideration of the rejection is earnestly solicited.

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Claims 20-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Obrador in view of U.S. Patent No. 7,072,846 to Robinson (hereinafter "Robinson"), with further support from Ferhatosmanoglu et al. (hereinafter "Ferhatosmanoglu").

Claims 20-25 depend from claims 1 and 16, and therefore include all of the elements of their parent claims. Because Robinson and/or Ferhatosmanoglu cannot cure the deficiencies of Obrador with respect to the characteristic parameters recited in the independent claims, it is respectfully asserted that Obrador, Robinson, and/or Ferhatosmanoglu, taken alone or in any combination, fail to disclose or suggest all of the elements of claims 20-25. Reconsideration of the rejection is earnestly solicited.

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to Applicant's representatives Deposit Account No. 07-0832.

Respectfully submitted,  
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